



Center for Medicaid and CHIP Services

December 12, 2011

Mr. Billy Millwee
Associate Commissioner for Medicaid & CHIP
Health and Human Services Commission
P.O. Box 13247
Austin, TX 78711

Dear Mr. Millwee:

Thank you for the October 25, 2011 request to renew the State of Texas' current section 1115(a) Family Planning Demonstration entitled the Women's Health Program (WHP) (11-W-00232/6). The State's submission included a request that the requirements of section 1902(a)(23) of the Social Security Act (the Act) would not apply to the Demonstration, in order to permit the State to restrict beneficiary choice of qualified family planning providers.

This letter is to notify Texas that the Centers for Medicare & Medicaid Services (CMS) will not approve the State's request for authority to deviate from the requirements of section 1902(a)(23) of the Act in order to restrict beneficiary choice of family planning providers under the Demonstration. Section 1902(a)(23)(A) of the Act provides that Medicaid beneficiaries may obtain covered services from any qualified provider willing to undertake the service. Section 1902(a)(23)(B) sets forth additional protections for beneficiary free choice of family planning providers even when beneficiaries are enrolled in managed care. Not applying these provisions would eliminate Medicaid beneficiaries' ability to receive family planning services from specific providers for reasons not related to their qualifications to provide such services. In light of the specific Congressional interest in assuring free choice of family planning providers, and the absence of any Medicaid purpose for the proposed restrictions, we have concluded, after consultation with the Secretary, that nonapplication of this provision to the Demonstration is not likely to assist in promoting the statutory purposes.

In light of the value of the State's demonstration to women throughout Texas, we would like to continue to work with the State to pursue a renewal of its current Demonstration without the request for nonapplication of section 1902(a)(23). While we cannot agree to the proposed restriction limiting beneficiary free choice of qualified family planning providers, CMCS is prepared to move forward expeditiously with consideration of this Demonstration extension request and we encourage the State to complete its application by providing the following information:

- Documentation of the State's public notice process in relation to this extension request as required by State Notice Procedures set forth in 59 Fed. Reg. 49249;

- Documentation of the State's tribal consultation process in relation to this extension request pursuant to section 1902(a)(73) of the Act and as outlined in the State's approved Medicaid State plan; and
- A copy of an interim evaluation report as required by the approved Special Terms and Conditions of your current Demonstration.

CMS is prepared to extend the existing demonstration under its current terms and conditions through March 31, 2012 while CMS and the State continue to work on the renewal. Please feel free to contact me at 202-205-5682 if you have any questions or wish to discuss this issue further.

Sincerely,

/s/

Cindy Mann
Director

cc: Victoria Wachino, CMCS
Jennifer Ryan, CMCS
Bill Brooks, Region VI ARA